

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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7	JAMES SEVENICH,)	No. 05-CV-0152-AAM
8)	
9	Plaintiff,)	ORDER DENYING PLAINTIFF'S
10)	MOTION FOR SUMMARY JUDGMENT
11	v.)	AND GRANTING DEFENDANT'S
12)	MOTION FOR SUMMARY JUDGMENT,
13	JO ANNE B. BARNHART,)	<i>INTER ALIA</i>
14	Commissioner of Social)	
15	Security,)	
16)	
17	Defendant.)	

BEFORE THE COURT are cross motions for Summary Judgment. (Ct. Rec. 4, 16). Attorney Maureen Rosette represents the Plaintiff; Assistant United States Attorney Pamela DeRusha and Special Assistant United States Attorney Johanna Vanderlee represent the Defendant. After reviewing the administrative record and briefs filed by the parties, the court **DENIES** Plaintiff's motion for summary judgment and **GRANTS** Defendant's motion for summary judgment.

I. JURISDICTION

James Sevenich (Plaintiff) filed for Disability Insurance Benefits on August 6, 2002, and Supplemental Security Income on June 28, 2002. (Tr. 109, 274.) He alleged disability due to brachial plexus injury to his right upper extremity, arthritis in his left shoulder and neck pain, with an onset date of June 30, 2000. (Tr. 137.) His application was denied initially and upon reconsideration. (Tr. 48, 54.) He timely requested a hearing

1 before an administrative law judge (ALJ), the first of which was
2 held on January 15, 2004. (Tr. 286-96.) A second hearing was
3 held on April 27, 2004. (Tr. 297-338.) ALJ R.J. Payne denied his
4 application, and the Appeals Council denied review, making the
5 ALJ's decision the final decision of the Commissioner. (Tr. 6.)
6 The instant matter is before the district court pursuant to 42
7 U.S.C. § 405(g).

8 II. SEQUENTIAL EVALUATION

9 The Social Security Act defines disability as the "inability
10 to engage in any substantial gainful activity by reason of any
11 medically determinable physical or mental impairment which can be
12 expected to result in death or which has lasted or can be expected
13 to last for a continuous period of not less than twelve months."
14 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides
15 that a claimant shall be determined to be under a disability only
16 if his impairments are of such severity that the claimant is not
17 only unable to do his previous work but cannot, considering
18 claimant's age, education and work experiences, engage in any
19 other substantial gainful work which exists in the national
20 economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

21 The Commissioner has established a five-step sequential
22 evaluation process for determining whether a person is disabled.
23 20 C.F.R. §§ 404.1520, 416.920; *Bowen v. Yuckert*, 482 U.S. 137,
24 140-42 (1987).

25 Step 1: Is the claimant engaged in substantial gainful
26 activities? 20 C.F.R. §§ 404.1520(a)(4)(i),
27 416.920(a)(4)(i). If he is, benefits are denied. If he
28 is not, the decision maker proceeds to step two.

1 Step 2: Does the claimant have a medically severe
2 impairment or combination of impairments? 20 C.F.R. §§
3 404.1520(a)(4)(ii), 416.920(a)(4)(ii)). If the claimant
4 does not have a severe impairment or combination of
5 impairments, the disability claim is denied. If the
6 impairment is severe, the evaluation proceeds to the
7 third step.

8 Step 3: Does the claimant's impairment meet or equal
9 one of the listed impairments acknowledged by the
10 Commissioner to be so severe as to preclude substantial
11 gainful activity? 20 C.F.R. §§ 404.1520(a)(4)(iii),
12 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P, App. 1.
13 If the impairment meets or equals one of the listed
14 impairments, the claimant is conclusively presumed to be
15 disabled. If the impairment is not one conclusively
16 presumed to be disabling, the evaluation proceeds to the
17 fourth step.

18 Step 4: Does the impairment prevent the claimant from
19 performing work he has performed in the past? 20 C.F.R.
20 §§404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step,
21 the claimant's residual functional capacity assessment
22 is considered. If the claimant is able to perform his
23 previous work, he is not disabled. If the claimant
24 cannot perform his previous work, then the evaluation
25 proceeds to the fifth and final step.

26 Step 5: Is the claimant able to perform other work in
27 the national economy in view of his age, education, work
28 experience and residual functional capacity? 20 C.F.R.
§§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

The initial burden of proof rests upon the claimant to
establish a prima facie case of entitlement to disability
benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971).
This burden is met once a claimant establishes that a physical or
mental impairment prevents him from engaging in his previous
occupation. At step five, the burden shifts to the Commissioner
to show that (1) the claimant can perform other substantial
gainful activity; and (2) a "significant number of jobs exist in
the national economy" which claimant can perform. *Kail v.*
Heckler, 722 F.2d 1496, 1498 (9th Cir. 1984).

III. STANDARD OF REVIEW

In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001) the court set out the standard of review:

A district court's order upholding the Commissioner's denial of benefits is reviewed *de novo*. *Harman v. Apfel*, 211 F.3d 1172, 1174 (9th Cir. 2000). The decision of the Commissioner may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401, 91 S.Ct. 1420 (1971). If the evidence is susceptible to more than one rational interpretation, the court may not substitute its judgment for that of the Commissioner. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, although deference is owed to a reasonable construction of the applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000).

IV. STATEMENT OF THE CASE

Detailed facts of the case are set forth in the transcript of proceedings and the ALJ's decision and are briefly summarized here. Plaintiff was 35 years old at the time of the ALJ hearing. (Tr. 301.) He has worked as a custodian, a commercial fisherman, a sawyer, and a pressman helper. (Tr. 306-08.) Plaintiff was not married and had no children. (Tr. 302.) He was injured in a motor vehicle accident when he was 23 years old, and suffered a brachial plexus injury. (Tr. 169-70.) This injury caused major loss of function in his right upper extremity. (Tr. 222.) Since the vehicle accident, he has attended college and earned his

1 bachelor's degree in business administration. (Tr. 303-04.)
2 Plaintiff testified that he could not use his right hand, but could
3 write with his left hand at approximately 25 per cent of the speed
4 of his former right hand. (Tr. 302.) He stated he could not lift
5 more than 20 pounds with his left hand. (Tr. 315.) He had no
6 problems standing or walking, and could sit only three hours at a
7 time, due to intermittent neck pain. (Tr. 315.) He took no
8 prescription or over-the-counter medication for the pain. (Tr.
9 314.) He testified he lived alone in an apartment, attended AA
10 meetings every day, used the computer a couple hours each day, and
11 took care of his activities of daily living. (Tr. 323-27.) He
12 enjoyed fishing, and he socialized with his family weekly. (Tr.
13 325, 327.)

14 Medical expert James M. Haynes, M.D. and vocational expert
15 Tom Moreland also testified at the hearings.

16 V. ADMINISTRATIVE DECISION

17 ALJ Payne applied the five-step sequential evaluation process
18 for determining whether Plaintiff is disabled. At step one, he
19 found Plaintiff had not engaged in substantial gainful activity
20 since the alleged onset date; at step two he found Plaintiff had
21 the severe physical impairment of right upper extremity brachial
22 plexus palsy. At step three, he found the impairment did not meet
23 or equal the requirements of a listed impairment. (Tr. 27.) The
24 ALJ found Plaintiff's testimony regarding his limitations was not
25 totally credible for reasons discussed in his decision. (Id.) At
26 step four, he determined Plaintiff retained the ability to perform
27 a wide range of light work that involves occasional lifting of 20
28 pounds and frequent lifting 10 pounds, with no standing or walking

1 limitations; however, severe paralysis of the right upper
2 extremity precluded pushing and pulling with that extremity, and
3 climbing ladders, ropes or scaffolds. Plaintiff was also
4 restricted in reaching, handling, fingering and feeling with his
5 right upper extremity. (Tr. 25.) The ALJ found at step four that
6 Plaintiff could not perform his past relevant work and proceeded
7 to step five. (Tr. 26.) Based in part on the testimony of
8 vocational expert Tom Moreland, ALJ Payne determined Plaintiff was
9 able to perform other light and sedentary level jobs in the
10 national economy such as usher, parking lot attendant, and charge
11 account clerk. (Id.) Thus, Plaintiff was found not "disabled,"
12 as defined in the Social Security Act, at any time through the
13 date of the ALJ's decision. (Tr. 27.)

14 VI. ISSUES

15 The question presented is whether the ALJ's decision is
16 supported by substantial evidence and is free of legal error.
17 Plaintiff contends the ALJ erred when he: (1) relied upon the
18 medical expert's testimony; (2) assessed Plaintiff's credibility;
19 (3) rejected an examining psychologist's opinions; and (4)
20 assessed Plaintiff's residual functional capacity (RFC). (Ct.
21 Rec. 14 at 10).

22 VII. DISCUSSION

23 A. Evaluation of Medical Evidence.

24 Plaintiff first argues that the ALJ's reliance on the
25 opinions of the medical expert, Dr. Haynes, in determining
26 Plaintiff could still do light work was error. (Ct. Rec. 14 at
27 10). In social security proceedings, the ALJ is responsible for
28 resolving ambiguities and conflicts in the medical record, if any.

1 *Batson v. Barnhart*, 359 F.3d 1190, 1195 (9th Cir. 2004), *Reddick*
2 *v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). The analysis and
3 opinion of a medical expert selected by an ALJ may be helpful in
4 his adjudication, and the court should not second guess the ALJ's
5 resolution of conflicting medical testimony. *Andrews*, 53 F.3d at
6 1041 (*citing Magallanes v. Bowen*, 881 F.2nd 747, 753 (9th Cir.
7 1989)). The testimony of a medical expert may serve as
8 substantial evidence when supported by other evidence in the
9 record. *Id.* If supported by substantial evidence, the ALJ's
10 findings must be upheld, even where the evidence is susceptible to
11 more than one rational interpretation. *Andrews*, 53 F.3d at 1039-
12 40.

13 Here, medical records show that Plaintiff's physicians
14 consistently opined that Plaintiff's right hand was severely
15 impaired by the brachial plexus injury in 1992, but Plaintiff
16 retained the ability to perform light or sedentary work using his
17 left arm and hand. In August 1998, Plaintiff was examined by Lisa
18 Kuhar, M.D., who determined Plaintiff could lift and carry with
19 his left hand only, could sit, stand and move without difficulty
20 and could work eight hours a day, five days a week at moderate
21 duty that did not involve use of his right hand. (Tr. 210.) In
22 November 2000, Plaintiff's physical therapist observed Plaintiff
23 was unable to use his right hand, but he could perform well with
24 his left hand. (Tr. 217-18.) In February 2002, Charles E.
25 Brondos, M.D. with a speciality in neurology, found Plaintiff's
26 right upper arm, forearm and hand were markedly limited. He also
27 found movement and coordination on Plaintiff's left side were
28 normal, with moderate limitations on his left arm due to shoulder

1 pain. Dr. Brondos concluded that Plaintiff could do light work
2 with his left hand. (Tr. 222-25.) In August 2002, Dr. Robert Rose
3 examined Plaintiff and noted moderate muscle atrophy in the right
4 arm with compromised motor functioning. Plaintiff could do his
5 own cooking, shopping and cleaning, and was not taking medication
6 for his left shoulder discomfort. (Tr. 227-29.) Charles Wolfe,
7 M.D., non-examining agency physician, completed a physical
8 residual functioning capacity (RFC) assessment in October 2002,
9 after a review of Plaintiff's records. He determined Plaintiff
10 could perform light work with his left arm. (Tr. 233-238.)

11 At the hearing, Dr. Haynes, who also had reviewed Plaintiff's
12 medical records, opined that due to Plaintiff's right arm
13 paralysis, he was limited to one-armed jobs of a light level, but
14 had no limitations on standing, walking or sitting. Plaintiff
15 could lift 20 pounds occasionally and 10 pounds frequently with
16 the left arm and hand.¹ His severe paralysis of the right upper
17 extremity precluded pushing and pulling with his right upper
18 extremity, and he should never climb ladders, ropes and scaffolds.
19 Dr. Haynes testified Plaintiff should avoid reaching, handling,
20 fingering and feeling with his right upper extremity, but these
21 activities would be unlimited for his left side. (Tr. 290-93.)
22 Dr. Haynes' opinions are consistent with the opinions of Drs.
23 Kuhar, Brondos, Rose and Wolfe, discussed above, which were
24 summarized thoroughly and accepted by the ALJ in his decision.
25 (Tr. 19-24.) Consequently, Dr. Haynes' opinions are considered

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27 ¹ This is consistent with Plaintiff's testimony in which he
28 stated he could lift 10 pounds on a repetitive basis and 20 pounds
"not a lot." (Tr. 315-16.)

1 substantial evidence. *Andrews*, 53 F.3d at 1041. The ALJ did not
2 err in adopting Dr. Haynes' assessment in his RFC findings. (Tr.
3 25.)

4 The ALJ also found Plaintiff's RFC included the non-
5 exertional limitations of "mild to moderate, occasional to
6 frequent pain," treated effectively with over-the-counter
7 medication. He found Plaintiff was "reasonably attentive and
8 responsive in a work setting" and "able to carry out normal work
9 assignments satisfactorily." (Tr. 25.) Plaintiff asserts the ALJ
10 erred when he improperly rejected opinions regarding mental
11 limitations assessed by examining psychologist, Dennis R. Pollack,
12 Ph.D. Plaintiff argues that due to this error, the RFC and the
13 hypothetical presented to the vocational expert were not supported
14 by substantial evidence. (Ct. Rec. 14 at 14).

15 Dr. Pollack administered objective psychological testing and
16 conducted a clinical interview in January and February 2004. (Tr.
17 264-72.) He diagnosed anxiety disorder, NOS and personality
18 disorder with schizoid and avoidant features. (Tr. 268.) In his
19 narrative summary of the interview, however, he observed
20 Plaintiff's thinking was "logical and progressive," and there was
21 no indication of hallucinations or delusions. He reported "no
22 unusual anxiety symptoms were reported." Plaintiff told Dr.
23 Pollack that he was not taking any medication at the time, he
24 visited friends or relatives daily, took care of his own daily
25 chores, and attended Alcoholics Anonymous daily. (Tr. 264-66.)

26 In his Medical Source Statement, Dr. Pollack indicated
27 Plaintiff had "marked" limitations in his ability to "complete a
28 normal workday and workweek without interruptions from

1 psychologically based symptoms and to perform at a consistent pace
2 without an unreasonable number and length of rest periods." (Tr.
3 270.) The ALJ rejected these limitations as unsupported by the
4 record. (Tr. 23.) Plaintiff asserts this was error because the
5 ALJ did not give adequate reasons for discounting an
6 uncontradicted examining psychologist's opinion. (Ct. Rec. 14 at
7 14).

8 In rejecting an uncontradicted medical opinion, the
9 Commissioner must provide "clear and convincing" reasons. *Lester*
10 *v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995) (*citation omitted*).
11 If the opinion is contradicted, it can only be rejected for
12 specific and legitimate reasons that are supported by substantial
13 evidence in the record. *Andrews v. Shalala*, 53 F.3d 1035, 1043
14 (9th Cir. 1995). Historically, the courts have recognized
15 conflicting medical evidence, the absence of regular medical
16 treatment during the alleged period of disability, and the lack of
17 medical support for doctors' reports based substantially on a
18 claimant's subjective complaints of pain as specific, legitimate
19 reasons for disregarding a treating or examining physician's
20 opinion. See *Flaten v. Secretary of Health and Human Serv.*, 44
21 F.3d 1453, 1463-64 (9th Cir. 1995); *Fair v. Bowen*, 885 F.2d 597,
22 604-05 (9th Cir. 1989). The more consistent an opinion is with
23 the record as a whole, the more weight is given to that opinion.
24 20 C.F.R. § 404.1527(d)(4). The ALJ does not need to accept the
25 opinion of any medical source if it is conclusory, brief or
26 unsupported by findings. *Matney on Behalf of Matney v. Sullivan*,
27 981 F.2d 1016, 1019 (9th Cir. 1992).

28 Contrary to Plaintiff's assertion, Dr. Pollack's opinions are

1 not uncontradicted. In July 1998, psychiatrist Mohammad Khan,
2 M.D. examined Plaintiff and diagnosed alcohol dependence, in
3 partial remission and post traumatic stress disorder, moderate.
4 (Tr. 216.) He noted Plaintiff was attending college and was close
5 to finishing his degree. He also stated Plaintiff was not
6 depressed and did not exhibit Axis II symptoms. (Id.) In any
7 case, as discussed below, the ALJ cited "clear and convincing"
8 reasons for discounting Dr. Pollack's assessment of limitations.

9 In his discussion of Dr. Pollack's findings, the ALJ
10 specifically noted that results from personality testing
11 administered by Dr. Pollack were invalid due to Plaintiff's
12 "elevated fake bad score" and exaggeration of symptoms. The ALJ
13 found "no conclusion can be made about [claimant's] personality."
14 (Tr. 23.) The record confirms that Dr. Pollack reported that
15 Plaintiff's dramatically elevated scores made the personality
16 testing invalid. (Tr. 267.) Other specific reasons given by the
17 ALJ for rejecting Dr. Pollack's limitations were: Dr. Pollack saw
18 Plaintiff only one time and did not report any observed mental
19 deficits; the limitations assessed were not consistent with
20 Plaintiff's self-reported daily activities; and, contrary to the
21 "marked" limitations assessed, Plaintiff was able to use the
22 computer, visit with friends and family, and attend and
23 concentrate on college level studies to obtain his Bachelor's
24 Degree. (Tr. 23.) The ALJ also cited Plaintiff's lack of
25 professional mental health treatment and/or medication as reasons
26 for rejecting Dr. Pollack's opinions, as well as the fact that
27 Plaintiff had not alleged mental conditions as a basis for
28 disability. (Id.) These are "clear and convincing" reasons,

1 supported by the documented record and by Plaintiff's testimony at
2 the hearing.²

3 For example, Plaintiff testified that he lived alone, did his
4 own cleaning, laundry, cooking and dishwashing, and used public
5 transportation to attend AA meetings daily. He visited with his
6 father regularly for meals. He testified he enjoyed bank fishing
7 and was able to unhook fish using his foot and left hand. (Tr.
8 322-28.) He stated he took over-the-counter medication sparingly
9 for any discomfort, and took no prescription drugs. (Tr. 259.)
10 He also reported to Dr. Pollack that he could operate an adding
11 machine, typewriter and computer, and spent time creating WEB
12 pages and surfing the internet. (Tr. 266.) Significantly, during
13 the time period at issue, Plaintiff was able to attend college,
14 work part time as a custodian, complete the bachelor's program and
15 earn a degree in business administration and information systems.
16 (Tr. 303-04, 306.)

17 The record in its entirety supports the ALJ's evaluation and
18 interpretation of the medical evidence, as well as his reliance on
19 Dr. Haynes' testimony regarding physical restrictions. Further,
20 the ALJ gave adequate reasons for rejecting the mental limitations
21 assessed by Dr. Pollack. See e.g., *Matthews v. Shalala*, 10 F.3d
22 678, 680 (9th Cir. 1993)(ability to attend school regularly
23 inconsistent with alleged inability to perform all work).

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25 ² Plaintiff argues that his testimony supports Dr. Pollack's
26 assessment of "marked" limitations in his ability to complete a
27 normal workday due to psychologically based symptoms, because he
28 stated he is "only able to use his left hand at 25 per cent of the
speed he formerly had in [his] right hand." (Ct. Rec. 14 at 14).
However, this is a physical limitation and, thus, not relevant in
the assessment of mental functional capacity.

1 B. Symptom Testimony and Credibility

2 Plaintiff contends the ALJ improperly rejected his testimony
3 regarding pain and inability to work; therefore, he argues, this
4 testimony should be credited and those symptoms should have been
5 incorporated in the ALJ's hypothetical question at step five.
6 (Ct. Rec. 14 at 13).

7 An ALJ cannot be required to believe every allegation of
8 disabling pain, or else disability benefits would be available for
9 the asking, a result plainly contrary to 42 U.S.C. § 423(d)(5)(A).
10 This holds true even where the claimant introduces medical
11 evidence showing that he has an ailment reasonably expected to
12 produce some pain; many medical conditions produce pain not severe
13 enough to preclude gainful employment. *Fair*, 885 F.2d at 603.
14 Nonetheless, an adjudicator "may not discredit a claimant's
15 testimony of pain and deny disability benefits solely because the
16 degree of pain alleged by the claimant is not supported by
17 objective medical evidence." *Bunnell v. Sullivan*, 947 F.2d 341,
18 345-46 (9th Cir. 1991); 20 C.F.R. §§ 404.1529(c)(2),
19 416.929(c)(2). If there is no affirmative evidence that the
20 claimant is malingering, the ALJ must provide "clear and
21 convincing" reasons for rejecting the claimant's testimony
22 regarding the severity of symptoms. *Reddick*, 157 F.3d at 722.

23 The ALJ may consider the following factors when weighing the
24 claimant's credibility: his reputation for truthfulness,
25 inconsistencies either in his testimony or between his testimony
26 and conduct, daily activities, work record, and testimony from
27 physicians and third parties concerning the nature, severity, and
28

1 effect of the symptoms of which he complains. *Light v. Social Sec.*
2 *Admin.*, 119 F.3d 789, 792 (9th Cir. 1997). If the ALJ's
3 credibility finding is supported by substantial evidence in the
4 record, the court may not engage in second-guessing. *See Morgan*,
5 169 F.3d at 600.

6 Here, the ALJ found Plaintiff's allegation regarding his
7 symptoms were not totally credible. (Tr. 27.) However,
8 consistent with Plaintiff's testimony that he experienced pain in
9 his left shoulder and neck, the ALJ found a non-exertional
10 limitation of mild to moderate pain. (Tr. 25.) He specifically
11 found that despite Plaintiff's complaints of allegedly disabling
12 symptoms, he was taking no medication for the pain. (Tr. 25.) *See*
13 *Social Security Ruling (SSR 96-7)* (where level of treatment for
14 alleged impairment/symptom is inconsistent with level of
15 complaint, credibility may be impugned absent explanation of
16 inconsistency). The record indicates Plaintiff stated he avoids
17 pain medication that would affect his liver, but did not take
18 alternative pain-killers. Rather, he tolerated the pain. (Tr.
19 314.)

20 The ALJ articulated other "clear and convincing" reasons for
21 discounting Plaintiff's complaints. For example, he found that
22 Plaintiff's reported daily activities were not consistent with his
23 complaints of disabling limitations; that objective personality
24 test results indicated exaggeration of symptoms, and that
25 Plaintiff's ability to complete a college education during the
26 relevant time period and work as a custodian while in college, was
27 inconsistent with Plaintiff's reported difficulties. (Tr. 23-24.)

1 As discussed above, these findings are supported by the record.
2 Since the record in its entirety supports the ALJ's credibility
3 finding, his RFC and the hypothetical propounded to the vocational
4 expert, Plaintiff's argument that the ALJ's hypothetical question
5 was incomplete is without merit. See *Magallanes*, 881 F.2d at 756-
6 57 (ALJ is not bound to accept as true all limitations propounded
7 by claimant's counsel; rather, hypothetical questions posed to the
8 vocational expert must include claimant's limitations and
9 restrictions supported by the record); see also Tr. 332-33.

10 11 **VIII. CONCLUSION**

12 The ALJ did not err in his evaluation of Plaintiff's medical
13 records and adoption of the medical expert's assessment. Dr.
14 Haynes' assessment, which is consistent with the other medical
15 opinions of record, is substantial evidence. The ALJ's
16 credibility finding and residual functional capacity determination
17 are supported by substantial evidence in the entire record.
18 Having proceeded to step five of the sequential evaluation, the
19 ALJ's hypothetical question was proper, and he did not err in
20 finding Plaintiff not "disabled" as defined by the Social Security
21 Act. Accordingly,

22 **IT IS ORDERED:**

23 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 4**) is
24 **DENIED.**

25 2. Defendant's Motion for Summary Judgment (**Ct. Rec. 16**) is
26 **GRANTED.**

27 3. Judgment for the **DEFENDANT** shall be entered. The District
28

1 Court Executive is directed to enter this Order, forward copies to
2 counsel, and close this file.

3 **DATED** this 3rd day of February 2006.

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5 s/ Alan A. McDonald
6 ALAN A. McDONALD
7 SENIOR UNITED STATES DISTRICT JUDGE
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